

Second, the TSS made the requirement in question. Section 714.03 of the M.P.E.P. states that where there is an informality as to the fee in connection with an amendment to a non-final Office action presenting additional claims, the applicant is notified by the technical support staff. The amendment in question did not present additional claims, and the TSS should not have notified applicant.

Third, the amendment filed 12/4/2006 did not, in fact, add any additional independent claims. Claims 1 and 5 are the only independent claims in the application. The only requirements of a dependent claim are that it refers back to and further restricts the independent claim or a claim dependent thereon. See 37 CFR 1.75 in this regard. Claims 2-4 refer back to claim 1 and further restrict claim 1. Claims 6-8 refer back to claim 5 and further restrict claim 5. Claim 9 refers back to claim 4 and further restricts claim 4. Claim 10 refers back to claim 6 and further restricts claim 6.

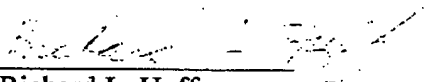
In the event there is a question regarding the fact that any of these dependent claims are truly dependent claims and not independent claims, the M.P.E.P. adequately answers this question. The test as to whether a claim is a proper dependent claim is that it shall include every limitation of the claim from which it depends or in other words that it shall not conceivably be infringed by anything which would not also infringe the basic claim.

The fact that a dependent claim which is otherwise proper might relate to a separate invention which would require a separate search or be separately classified from the claim on which it depends would not render it an improper dependent claim, although it might result in a requirement for restriction.

The fact that the independent and dependent claims are in different statutory classes does not, in itself, render the latter improper. Thus, if claim 1 recites a specific product, a claim for the method of making the product of claim 1 in a particular manner would be a proper dependent claim since it could not be infringed without infringing claim 1.

It is thus submitted that claims 1 and 5 are the only independent claims in the application. Applicant should not be required to pay a fee for excess independent claims or cancel any claims. Applicant solicits the withdrawal of this requirement and a letter to the effect that the requirement has been withdrawn.

Respectfully submitted,


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